

INTEREST RATES UNDER THE RENEGOTIATION ACT OF 1951

DECEMBER 14, 1970.—Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

Mr. MILLS, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 19566]

The Committee on Ways and Means, to whom was referred the bill (H.R. 19566) to amend the Renegotiation Act of 1951, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert:

SECTION 1. MODIFICATION OF INTEREST RATE ON EXCESSIVE PROFITS.

(a) Section 105(b)(2) of the Renegotiation Act of 1951, as amended (50 U.S.C. App., sec. 1215(b)(2)), is amended—

(1) by striking out "rate of 4 per centum per annum" each place it appears and inserting in lieu thereof "rate per annum determined pursuant to the next to the last sentence of this paragraph for the period which includes the date on which interest begins to run";

(2) by striking out the phrase "interest shall accrue and be paid" the second place it appears in subparagraph (A) and inserting in lieu thereof "interest at the same rate shall accrue and be paid";

(3) by adding at the end thereof the following new sentences:

"Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable to the period beginning on January 1, 1971, and ending on June 30, 1971, and to each six-month period thereafter. Such rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately five years."

(b) The amendments made by subsection (a) shall apply only with respect to amounts of excessive profits determined by the Renegotiation Board and with respect to the amounts of additional excessive profits determined by the Tax Court after December 31, 1970.

SEC. 2. MODIFICATION OF INTEREST RATE ON REFUNDS

(a) Section 108 of the Renegotiation Act of 1951, as amended (50 U.S.C. App., sec. 1218), is amended by striking out "at the rate of 4 per centum per annum" in the last sentence and by inserting before the period at the end of such sentence

"at the rate per annum determined pursuant to the next to the last sentence of section 105(b)(2) for the period which includes the date on which interest begins to run".

(b) The amendments made by subsection (a) shall apply only with respect to amounts finally adjudged or determined to have been erroneously collected after December 31, 1970, by the United States pursuant to a determination of excessive profits.

Amend the title so as to read:

A bill relating to the interest rate under the Renegotiation Act of 1951.

I. SUMMARY

The bill amends the Renegotiation Act of 1951 to deal with interest rates on excessive profits determinations and on refunds where excessive profits determinations are found to be erroneous. In these cases it provides for flexible interest rates to be determined by the Secretary of the Treasury on the basis of current commercial rates at the time of the excessive profits determinations.

This bill has been reported unanimously by your committee and the Renegotiation Board favors its enactment.

II. REASONS FOR BILL

Under present law, a contractor who disagrees with a determination of excessive profits as made by the Renegotiation Board may petition the U.S. Tax Court for a review of the Board's findings. In such circumstances, the Government does not at that time collect the excessive profits as then determined if the contractor (pursuant to sec. 108 of the act) posts a bond which assures payment of any excessive profits as ultimately determined by the Tax Court. Under existing law, interest at the rate of 4 percent accrues on these unpaid excessive profits beginning 30 days after the Board's determination and running until these excessive profits (or any lesser excessive profits as determined by the Tax Court) are repaid. Interest at the same rate also accrues on any additional excessive profits determined by the Tax Court from the date of the determination until the time of the repayment.

The committee believes that in any of the situations outlined above the contractor has, in effect, borrowed funds from the Government for a period extending from the time of the Board's determination, or the Tax Court's redetermination, to the time when any excessive profits are repaid. Not to charge realistic interest on these unpaid excessive profits tends to encourage the filing of petitions for redetermination with the Tax Court merely in order to secure low-interest-rate "loans" from the Government.

Although a bond must be posted upon petitioning the Tax Court, the bond may represent the deposit of interest-bearing Treasury obligations which do not significantly increase the cost of the "loan" to the contractor.

Accordingly, it is the view of the committee that the contractor should be required to pay interest on these "borrowed" funds at a rate which is reasonable in light of the prevailing commercial rates

of interest for borrowed money. Although the present statutory rate of 4 percent may have been reasonable when it was adopted, it is unrealistic in view of presently prevailing interest levels.

In the reverse situation, if excessive profits as determined by the Board are repaid and subsequently the Tax Court determines that there were no excessive profits or that they were less than the amount determined by the Board, it seems equally clear that the Government has, in effect, borrowed money from the contractor for a period extending from the time of the repayment of the erroneously determined excessive profits to the time of the refund. Under existing law, interest at the rate of 4 percent is paid on such refunds. Here too, the committee believes that interest should be paid on the refund at a rate which is reasonable in light of prevailing commercial interest rates.

III. EXPLANATION OF PROVISION

The bill provides that the rate of interest to be used with respect to excessive profits is to be determined by the Secretary of the Treasury for the 6-month period beginning on January 1, 1971, and for each 6-month period thereafter. He is to determine the rate by taking into consideration current rates of interest on new private commercial loans maturing approximately 5 years in the future. The prevailing rates are to be determined on the basis of interest charges for such loans for a 5-year period because 5 years approximates the average time over which interest payable on excessive profits recovered in the past has been paid.

The rate of interest, determined in the manner provided above, for any particular 6-month period is to apply to all determinations of excessive profits, and to all overcollections of excessive profits, on which interest begins to run in the period in question. The interest rate once determined in this manner with respect to any specific excessive profits determination is to continue unchanged thereafter with respect to those excessive profits. If subsequently in a redetermination there are additional excessive profits, the interest rate applicable to these additional profits is to be the interest rate applicable for the period in which the redetermination occurs.

Under the bill, as amended, the new interest rate provision is to apply only to excessive profits determinations made after December 31, 1970, and to overcollections made after that date. The present 4-percent interest rate is to continue to apply to situations in which the determination of excessive profits or the overcollection was made prior to January 1, 1971. Thus, the bill as amended is wholly prospective in its application.

IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed

in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SECTIONS 105 AND 108 OF THE RENEGOTIATION ACT OF 1951

SEC. 105. RENEGOTIATION PROCEEDINGS.

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(b) METHODS OF ELIMINATING EXCESSIVE PROFITS.—

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(2) INTEREST.—Interest at the [rate of 4 per centum per annum] *rate per annum determined pursuant to the next to the last sentence of this paragraph for the period which includes the date on which interest begins to run* shall accrue and be paid on the amount of such excessive profits from the thirtieth day after the date of the order of the Board or from the date fixed for repayment by the agreement with the contractor or subcontractor to the date of repayment, and on amounts required to be withheld by any person or subcontractor for the account of the United States pursuant to paragraph (1) (C), from the date payment is demanded by the Secretaries or any of them to the date of payment. When The Tax Court of the United States, under section 108, re-determines the amount of excessive profits received or accrued by a contractor or subcontractor, interest at the [rate of 4 per centum per annum] *rate per annum determined pursuant to the next to the last sentence of this paragraph for the period which includes the date on which interest begins to run* shall accrue and be paid by such contractor or subcontractor as follows:

(A) When the amount of excessive profits determined by the Tax Court is greater than the amount determined by the Board, interest shall accrue and be paid on the amount determined by the Board from the thirtieth day after the date of the order of the Board to the date of repayment and, in addition thereto, interest *at the same rate* shall accrue and be paid on the additional amount determined by the Tax Court from the date of its order determining such excessive profits to the date of repayment.

(B) When the amount of excessive profits determined by the Tax Court is equal to the amount determined by the Board, interest shall accrue and be paid on such amount from the thirtieth day after the date of the order of the Board to the date of repayment.

(C) When the amount of excessive profits determined by the Tax Court is less than the amount determined by the Board, interest shall accrue and be paid on such lesser amount from the thirtieth day after the date of the order of the Board to the date of repayment, except that no interest shall accrue or be payable on such lesser amount if such lesser amount is not in excess of an amount which the contractor or subcontractor tendered in payment prior to the issuance of the order of the Board.

Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable to the period beginning on January 1, 1971, and ending on June 30, 1971, and to each six-month period thereafter. Such rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately five years.

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SEC. 108. REVIEW BY THE TAX COURT.

Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may—

(a) if the case was conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 105(a) of the notice of such order, or

(b) if the case was not conducted initially by the Board itself—within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) after the mailing under section 107(e) of the notice of the decision of the Board not to review the case or the notice of the order of the Board determining the amount of excessive profits,

file a petition with The Tax Court of the United States for a redetermination thereof. Upon such filing, such court shall have exclusive jurisdiction, by order, to determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency except as provided in section 108A. The court may determine as the amount of excessive profits an amount either less than, equal to, or greater than that determined by the Board. A proceeding before the Tax Court to finally determine the amount, if any, of excessive profits shall not be treated as a proceeding to review the determination of the Board, but shall be treated as a proceeding de novo. For the purposes of this section the court shall have the same powers and duties, insofar as applicable in respect of the contractor, the subcontractor, the Board, and the Secretary, and in respect of the attendance of witnesses and the production of papers, notice of hearings, hearings before divisions, review by the Tax Court of decisions of divisions, stenographic reporting, and reports of proceedings, as such court has under sections 1110, 1111, 1113, 1114, 1115(a), 1116, 1117(a), 1118, 1120, and 1121 of the Internal Revenue Code in the case of a proceeding to redetermine a deficiency. In the case of any witness for the Board, the fees and mileage, and the expenses of taking any deposition shall be paid out of appropriations of the Board available for that purpose, and in the case of any other witnesses shall be paid, subject to rules prescribed by the court, by the party at whose instance the witness appears or the deposition is taken. The filing of a petition under this section shall operate to stay the execution of the order of the Board under subsection (b) of section 105 only if within ten days after the filing of the petition the petitioner files with the Tax Court a good and sufficient bond, approved by such court, in such amount as may be fixed by the court.

Any amount collected by the United States under an order of the Board in excess of the amount found to be due under a determination of excessive profits by the Tax Court shall be refunded to the contractor or subcontractor with interest thereon [at the rate of 4 per centum per annum] from the date of collection by the United States to the date of refund *at the rate per annum determined pursuant to the next to the last sentence of section 105(b)(2) for the period which includes the date on which interest begins to run.*

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